

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2006

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

GERSON NUNEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

No. 06-74018

3:99-cr-00036 **RECEIVED**

DEC 11 2006

ORDER CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Before: LEAVY, GOULD and CLIFTON, Circuit Judges.

The application for authorization to file a second or successive 28 U.S.C. § 2255 motion in the district court is denied. Petitioner has not made a prima facie showing under 28 U.S.C. § 2255 of:

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the defendant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable. *See also United States v. Cruz*, 423 F.3d 1119 (9th Cir. 2005) (per curiam)

No petition for rehearing or motion for reconsideration shall be filed or entertained in this case. *See* 28 U.S.C. § 2244(b)(3)(E).

All other pending motions are denied as moot.

DENIED.

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A TRUE COPY
CATHY A. CATTERSON
CLERK OF COURT
ATTEST

DEC - 6 2006

by: _____
Deputy Clerk